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*Attorney for Defendants, Asbury Park Zoning Board of Adjustment, Christopher Avallone, John Scully, Russell Lewis, Wendi Glassman, Daniel Harris, and Jill Potter*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

BREAKWATER TREATMENT AND  
WELLNESS CORP,

Plaintiff,

v.

THE CITY OF ASBURY PARK, JOHN MOOR, Individually and as Mayor of the City of Asbury Park, MICHELE ALONSO, Individually and as Director of Planning and Redevelopment of the City of Asbury Park, the ASBURY PARK ZONING BOARD OF ADJUSTMENT; CHRISTOPHER AVALLONE, Individually and as Chair of the Asbury Park Zoning Board of Adjustment, RUSSEL LEWIS, Individually and as a member of the Asbury Park Zoning Board of Adjustment; WENDI GLASSMAN, Individually and as a member of the Asbury Park Zoning Board of Adjustment; DANIEL HARRIS, Individually and as a member of the Asbury Park Zoning Board of Adjustment; JILL POTTER, Individually and as a member of the Asbury Park

Hon. Michael A. Shipp, U.S.D.J.  
Hon. Brendan Day, U.S.M.J.

Docket No. 3:23-cv-03661

Civil Action

**NOTICE OF MOTION TO  
DISMISS PURSUANT TO FED. R.  
CIV. P 12(B)(6)**

Zoning Board of Adjustment, JOHN DOE AND/OR JANE DOES 1-25, the said name being fictitious, XYZ COMPANIES 1-10, the said name being fictitious,

Defendants.

TO: United States District Court  
District of New Jersey – Newark Vicinage  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Stephen J. Edelstein, Esq.  
Weiner Law Group, LLP  
629 Parsippany Road  
Parsippany, New Jersey 07054  
*Attorney for Plaintiff*

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Wayne, New Jersey 07470  
*Attorney for City Defendants*

**PLEASE TAKE NOTICE** that on October 16, 2023, or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendants, City of Asbury Park Zoning Board of Adjustment, Christopher Avallone, John Scully, Russell Lewis, Wendi Glassman, Daniel Harris, and Jill Potter will move before the Honorable Michael A. Shipp, U.S.D.J., for an Order:

- a. Dismissing with prejudice all § 1983 claims in Count 1 with prejudice for failure to state a claim;

- b. Dismissing with prejudice all § 1985 claims against the Zoning Board in Count 2 for failure to state a claim;
- c. Dismissing all claims against the individually named members of the Zoning Board of Adjustment on the basis of qualified immunity, and
- d. Dismissing all remaining state counts against the Zoning Board of Adjustment with prejudice for failure to state a claim.

**PLEASE TAKE FURTHER NOTICE** that the undersigned shall rely upon the attached Brief in support of the motion.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Fed. R. Civ. P. 78, oral argument is not requested.

A proposed form of Order is attached.

ROTHSTEIN, MANDELL,  
STROHM, HALM &  
CIPRIANI, P.A.

Dated: September 15, 2023

By: s/ Michael S. Nagurka  
Michael S. Nagurka, Esq.